

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AT&T CORP. and Alascom, Inc., d/b/a AT&T  
Alascom, Inc.,

Plaintiff,

v.

DAVID W. WALKER, DONALD J.  
SCHROEDER, and TERRY A. GUNSEL,

Defendant.

TERRENCE J. DONAHUE, Trustee for the  
Chapter 7 Bankruptcy Estate of PT Cable, Inc.,

Plaintiff-in-Intervention,

v.

THE CARLYLE GROUP, L.P. a.k.a. The  
Carlyle Group; NEPTUNE  
COMMUNICATIONS, LLC; C/S VENTURE  
INVESTORS, L.P.; CARLYLE U.S.  
VENTURE PARTNERS, L.P.; CARLYLE  
VENTURE PARTNERS, L.P.; CARLYLE  
VENTURE COINVESTMENT, L.L.C.;  
NEPTUNE GLOBAL SYSTEMS, LLC (U.S.);  
DAVID W. WALKER and JANE DOE  
WALKER; DONALD J. SCHROEDER and  
JANE DOE SCHROEDER; BROOKE B.  
COBURN and JANE DOE COBURN; TERRY  
A. GUNSEL and JANE DOE GUNSEL;  
WILLIAM E. CONWAY, JR. and JANE DOE  
CONWAY; RICHARD G. DARMAN and  
JANE DOE DARMAN; and PETER H.  
SORENSEN; NEW YORK LIFE  
INSURANCE COMPANY, a New York  
mutual insurance company; NEW YORK LIFE  
INSURANCE AND ANNUITY  
CORPORATION, a Delaware corporation;  
JEFFERSON-PILOT LIFE INSURANCE  
COMPANY, a North Carolina corporation;  
JEFFERSON-PILOT FINANCIAL  
INSURANCE COMPANY, a Nebraska  
corporation; KANE REECE ASSOCIATES,  
INC., a New Jersey corporation; and JOHN  
AND JANE DOES 1-100;

Defendants-in-Intervention.

Case No. C04-5709FDB

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION OF  
JANE DOE DEFENDANTS  
WALKER, SCHROEDER, AND  
GUNSEL FOR DISMISSAL and  
GRANTING LEAVE TO AMEND  
COMPLAINT IN INTERVENTION

Defendants “Jane Doe” Walker, “Jane Doe” Schroeder, and “Jane Doe” Gunsell move to  
dismiss the Complaint in Intervention for failure to state a claim, or, in the alternative, for Summary

1 Judgment. These defendants contend that David W. Walker and his wife Barbara T. Walker moved  
2 from Washington in January 2006 and are now domiciled in Florida; Donald J. Schroeder and his  
3 wife Deirdre C. Schroeder are domiciled in Florida; and Terry A. Gunsel and his wife Barbara Gunsel  
4 are domiciled in Pennsylvania. Defendants argue that while Washington's community property law  
5 allows for "community liability" for tortious conduct of one spouse in certain circumstances, such  
6 "community liability" binds only those marital communities domiciled within Washington.  
7 Defendants cite *G.W. Equip. Leasing, Inc. v. Mt. McKinley Fence Co., Inc.*, 982 P.2d 114 (Wash.  
8 Ct. App. 1999) for the proposition that the state law of the matrimonial domicile applies to determine  
9 the rights of the marital community. The Defendants argue that as to the Individuals' spouses in this  
10 case, there is no allegation that they participated in or are jointly responsible for the acts giving rise  
11 to the Trustee's claims. Under Washington law, "when the management of community property is at  
12 issue, the state with the most significant interests is typically the state where the spouses reside." *Id.*  
13 at 117. Therefore, because Florida and Pennsylvania are not community property states, *See* 23 Pa.  
14 Cons. Stat. Ann. § 3501(a); Fla. Stat. 61.075, the Trustee cannot sue the Individuals' spouses solely  
15 to ensure access to the community property.

16 Noting that discovery has not yet commenced, the Trustee responds consenting to the  
17 dismissal of "Jane Does" Schroeder and Gunsel without prejudice so long as the Court tolls the  
18 statute of limitations as to them for any claims based upon their receipt of or benefit from the  
19 proceeds of the "Illegal Dividend." The Trustee argues that it is possible that property owned by the  
20 Schroeders and/or Gunsels jointly may be answerable for any judgment against the directors  
21 individually, and that any transfers by the directors to their spouses or to "husband and wife as  
22 tenants by the entireties" may be fraudulent, citing, *e.g. U.S. v. Green*, 201 F.3d 251 (3<sup>rd</sup> Cir. 2000).

23 As to "Jane Doe" Walker's motion, the Trustee argues that Washington law should be  
24 applied to determine whether there exists a Walker marital community, and whether that community  
25 (or the property owned by the community) is liable for the conduct of David Walker. Washington,

1 Florida, and Pennsylvania all apply the “most significant relationship” test to determine what  
2 substantive law will be applied. *See, e.g., Ellis v. Barto*, 82 Wn. App. 454, 458, 918 P.2d 540  
3 (1996)(torts). A choice of law determination is made only if there is an actual conflict between the  
4 laws or interests of Washington and the laws or interests of another state. *Id.* 457. Here the laws of  
5 Washington and those of Pennsylvania and Florida conflict as to the existence of a marital  
6 community, and community property, and whether monetary liability for the tortious conduct of a  
7 spouse constitutes a community debt for which community property is answerable. The Trustee  
8 argues that under Washington law, the law of the place where a tort is committed generally controls  
9 questions in connection with the act, the responsibility for it, and the nature of a cause of action  
10 based thereon, provided no other jurisdiction has a more substantial relationship to the occurrence or  
11 the parties. *Maag v. Voykovich*, 46 Wn.2d 302, 303, 208 P.2d 680 (1955); *Ellis*, 82 Wn. App. At  
12 458). The Trustee points out that Washington courts follow the Restatement (Second) of Conflict of  
13 Laws § 145 (1971) and determine the “most significant relationship” to the case by considering (a)  
14 the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c)  
15 the domicile, residence, nationality, place of incorporation, and place of business of the parties; and  
16 (d) the place where the relationship, if any, between the parties is centered. *Fields v. Legacy Health*  
17 *System* 413 F.3d 943, 952 (9<sup>th</sup> Cir. 2005). Additionally, the competing policies of the states involved  
18 must be weighed against the parties’ expectations. *See Potlatch Fed. Credit. Union v. Kennedy*, 76  
19 Wn.2d 806, 810, 459 P.2d 32 (1969).

20 Therefore, concludes the Trustee, under the foregoing principles, it is appropriate to apply  
21 Washington law here because Washington was the principal place of business for PT Cable, the  
22 wrongdoing alleged in the Complaint occurred in Washington, the injury to PT Cable occurred in  
23 Washington, the Walkers resided in Washington at the time of the alleged wrongdoing (moving away  
24 from Washington in January 2006), and the parties’ relationships (that between PT Cable and its  
25 director, David Walker, and that between the Walkers” themselves) are centered in Washington.

1 Florida, on the other hand, has no connection with the alleged wrongdoings or the injuries to PT  
2 Cable, and the parties' relationships are not centered in Florida, where the Walkers have resided only  
3 since January 2006. The Walkers had to have expected that the law regarding community property  
4 would control characterization of their property acquired during their marriage, and the creditors and  
5 shareholders of PT Cable have justifiable expectations regarding the applicability of Washington  
6 community property law as well.

7 Finally, the Trustee argues that the claim against the Walker Marital Community should not  
8 be dismissed because all property acquired during the marriage while residing in Washington is  
9 presumptively community property. RCW 26.16.030, and all debts or obligations incurred by one  
10 spouse for the arguable benefit of the marital community, are considered community obligations.  
11 *See, E.g. Brink v. Griffith*, 65 Wn.2d 253, 396 P.2d 793 (1964). Finally even if the tort is a separate  
12 tort of one spouse, creditors of the tortfeasor may reach the tortfeasor's one-half interest in  
13 community property. *See, e.g., deElche v. Jacobsen*, 95 Wn.2d 237, 622 P.2d 835 (1980).  
14 Moreover, the classification of movable property as community or separate is governed by the law of  
15 the domicile of the parties at the time of acquisition and community property retains its character  
16 even if the married couple moves to a common law state. 15A Am.Jur.2d Community Property §§  
17 14 and 16; *see also Seizer v. Sessions*, 132 Wn.2d 642, 651, 940 P.2d 261 (1997).

18 The Trustee asks that the Court grant leave to amend the Complaint to add certain  
19 allegations regarding the community property created during the time the Walkers were domiciled in  
20 Washington.

21 Having reviewed the parties contentions and citations to authority, the Court concludes that  
22 the Trustee makes the proper argument regarding the marital community issues in this case. The  
23 Motion as to "Jane Doe" Walker will be denied; the motion as to "Jane Doe" Schroeder and "Jane  
24 Doe" Gunsel will be granted without prejudice, but the Court will toll the statute of limitations as to  
25 them for any claims based upon their receipt of or benefit from the proceeds of the alleged "Illegal

Dividend.” Additionally, the Trustee is granted leave to amend the Complaint to add allegations regarding community liability.

ACCORDINGLY, IT IS ORDERED:

(1) Motion of Jane Doe Defendants Walker, Schroeder, and Gunsel to Dismiss [Dkt. # 101] is DENIED as to “Jane Doe” Walker and GRANTED as to “Jane Doe” Schroeder and “Jane Doe” Gunsel who are DISMISSED WITHOUT PREJUDICE, and the statute of limitations as to the Trustee’s claims against “Jane Doe” Schroeder and “Jane Doe” Gunsel is tolled for any claims based upon their receipt of or benefit from the proceeds of the alleged illegal dividend.

(2) The Trustee is given leave to amend the Complaint in Intervention to add allegations regarding community liability.

DATED this 29<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read 'Franklin D. Burgess', written over a horizontal line.

FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE